

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

SAMUEL LEVINE,

Plaintiff,

V.

CITY OF SEATTLE, et al.,

Defendants.

C16-1284 TSZ

MINUTE ORDER

The following Minute Order is made by direction of the Court, the Honorable Thomas S. Zilly, United States District Judge:

(1) Plaintiff's motion for leave to amend, docket no. 31, is GRANTED in part and DENIED in part as follows.

(a) To the extent that plaintiff seeks to substitute Officer Ian Stuart and Lieutenant Marc Garth Green for Doe defendants, and to strike certain allegations pursuant to the Minute Order entered March 7, 2017, docket no. 22, plaintiff's motion is GRANTED.

(b) To the extent that plaintiff proposes to add a claim of negligence, plaintiff's motion is DENIED as futile. Plaintiff has no cognizable claim for negligence; he may not base a claim of negligence on an intentional act, like the use of excessive force, and he has made no showing that defendants owed him a duty specifically and apart from the duty owed to the public in general. See Willard v. City of Everett, 2013 WL 4759064 at *2-*3 (W.D. Wash. Sept. 4, 2013). Plaintiff's reliance on Robb v. City of Seattle, 176 Wn.2d 427, 295 P.3d 212 (2013), is misplaced for the reasons set forth in Willard. Plaintiff's reliance on Parrott v. City of Bellingham, 2017 WL 3267696 (W.D. Wash. Aug. 1, 2017), is misplaced because, unlike in Parrott, in which the plaintiff relied on his

1 protected status under the Americans with Disabilities Act and Washington's Law
2 Against Discrimination to assert his negligence claim, in this matter, plaintiff
3 makes no allegation that the legislative intent exception to the public duty doctrine
4 applies.

5 (c) To the extent that plaintiff proposes to add a claim of intentional
6 infliction of emotional distress (outrage), plaintiff's motion is DENIED without
7 prejudice as premature. Plaintiff did not give notice of such tort claim pursuant to
8 RCW 4.96.020 until October 2, 2017, and he cannot bring such tort claim until
9 after the 60-day presentment period expires on December 1, 2017.

10 (d) Plaintiff shall electronically file his Second Amended Complaint,
11 modified in accordance with this Minute Order, within seven (7) days of the date
12 of this Minute Order.

13 (2) The Clerk is directed to send a copy of this Minute Order to all counsel of
14 record.

15 Dated this 3rd day of November, 2017.

16 William M. McCool

17 Clerk

18 s/Karen Dews

19 Deputy Clerk